

## Merit Systems Protection Board

## § 1201.81

available to testify within a reasonable time, or by stating an objection to the particular request and the reasons for the objection.

(2) If a party fails or refuses to respond in full to a discovery request, or if a nonparty fails or refuses to respond in full to a Board-approved discovery order, the requesting party may file a motion to compel discovery. The requesting party must file the motion with the judge, and must serve a copy of the motion on the other party and on any nonparty entity or person from whom the discovery was sought. The motion must be accompanied by:

(i) A copy of the original request and a statement showing that the information sought is relevant and material; and

(ii) A copy of the response to the request (including the objections to discovery) or, where appropriate, a statement that no response has been received, along with an affidavit or sworn statement under 28 U.S.C. 1746 supporting the statement. (See appendix IV.)

(3) The other party and any other entity or person from whom discovery was sought may respond to the motion to compel discovery within the time limits stated in paragraph (d)(4) of this section.

(d) *Time limits.* (1) Parties who wish to make discovery requests or motions must serve their initial requests or motions within 25 days after the date on which the judge issues an order to the respondent agency to produce the agency file and response.

(2) A party or nonparty must file a response to a discovery request promptly, but not later than 20 days after the date of service of the request or order of the judge. Any discovery requests following the initial request must be served within 10 days of the date of service of the prior response, unless the parties are otherwise directed. Deposition witnesses must give their testimony at the time and place stated in the request for deposition or in the subpoena, unless the parties agree on another time or place.

(3) Any motion to depose a nonparty (along with a request for a subpoena) must be submitted to the judge within the time limits stated in paragraph

(d)(1) of this section or as the judge otherwise directs.

(4) Any motion for an order to compel discovery must be filed with the judge within 10 days of the date of service of objections or, if no response is received, within 10 days after the time limit for response has expired. Any pleading in opposition to a motion to compel discovery must be filed with the judge within 10 days of the date of service of the motion.

(5) Discovery must be completed within the time the judge designates.

### § 1201.74 Orders for discovery.

(a) *Motion for an order compelling discovery.* Motions for orders compelling discovery and motions for the appearance of nonparties must be filed with the judge in accordance with § 1201.73(c)(2) and (d)(4).

(b) *Content of order.* Any order issued will include, where appropriate:

(1) A provision that the person to be deposed must be notified of the time and place of the deposition;

(2) Any conditions or limits concerning the conduct or scope of the proceedings or the subject matter that may be necessary to prevent undue delay or to protect a party or other individual or entity from undue expense, embarrassment, or oppression;

(3) Limits on the time for conducting depositions, answering written interrogatories, or producing documentary evidence; and

(4) Other restrictions upon the discovery process that the judge sets.

(c) *Noncompliance.* The judge may impose sanctions under § 1201.43 of this part for failure to comply with an order compelling discovery.

### § 1201.75 Taking depositions.

Depositions may be taken by any method agreed upon by the parties. The person providing information is subject to penalties for intentional false statements.

## SUBPOENAS

### § 1201.81 Requests for subpoenas.

(a) *Request.* Parties who wish to obtain subpoenas that would require the attendance and testimony of witnesses, or subpoenas that would require the